

FROM THE EXCHANGE OF INFORMATION TO TAX COMPLIANCE

Tumietto Daniele, *Corporate Consultant in the Digital Management of Processes and Documents for Companies and Public Administrations, Expert with the Legislative and Technical Standards Bodies in the National (UNI / UNINFO), European (CE, CEN, CEF) and Worldwide (UN / CEFAC, UNECE, ITU) Standard Organizations, Adjunct Professor at the Link Campus University in Rome, Milan, Italy*

The exchange of information between tax administrations is an international standard aimed at obtaining transparency on the assets and liabilities held abroad, preventing cross-border tax evasion and combating aggressive tax planning.

Over time this tool has evolved to include the agreements ("rulings") between AF and companies.

Today we can say that the distinction between "black list" and "white list" states has been superseded, replaced by collaborative and non-collaborative countries.

- Multilateral Convention on Mutual Administrative Assistance in Tax Matters (1988, 2010)

- Model Agreement on the automatic exchange of financial account information to improve international tax compliance (2014)

- Multilateral Competent Authority Agreement on automatic exchange of financial account information (2014)

- Common reporting and Due Diligence Standard (2014)

- BEPS Action 5 (Counteracting harmful tax practices more effectively – report, 2015)

- BEPS Action 12 (Disclosure of aggressive tax planning – report, 2015)

- BEPS Action 13 (Country-by-country reporting– report, 2015)

(BEPS acronym of “base erosion and profit shifting)

- Directive 2011/16/UE,

- Directive 2014/107/UE,

- Directive (UE) 2015/2376,

- Directive (UE) 2016/881,

- Directive (UE) 2016/2258,

- Directive (UE) 2018/822.

The exchange of information is the backbone of the system for preventing and combating tax evasion.

We have gradually switched from on-demand exchange agreements *to the automatic exchange of information*, which generates Big Data and data analytics available to tax administrations.

In a future (not too far) from «*follow the money*» (Giovanni Falcone) to «*follow the data*» (anonymous)

- Employee income

- Managerial compensation

- Life insurance products

- Guest Houses

- Property and real estate income
- Custody / deposit current accounts
- Income taxes on natural and legal persons, on consumption, excise duties, capital gains and financial income

- Mandatory social security contributions

- Taxes on successions and donations

Ruling subject to exchange

- preferential arrangements;

- Advance Pricing Agreement (APA)/Advance Tax Ruling (ATR) concerning *transfer pricing*;

- *cross-border* rulings which provide for a reduction in the tax base;

- preferential arrangements;

- Advance Pricing Agreement (APA) / Advance Tax Ruling (ATR) concerning transfer pricing;

- cross-border rulings which provide for a reduction in the tax base;

- existence and / or attribution of profits to the permanent establishment;

- artifices between related parties (related party conduit rulings);

- any other ruling which, in the absence of an express exchange forecasts, appears to be usable in order to move profits and to erode the tax base ("ruling that [...] gives rise to BEPS concerns")

And finally from 2020:

«Information disclosure obligation imposed on all actors who are usually involved in the development, marketing, organization and management of the implementation of a cross-border operation subject to the notification obligation or a series of such transactions, as well as to those who provide assistance or advice to counter aggressive tax planning mechanisms».

Essentially an obligation of **disclosure** to tax authorities by intermediaries (consultants, lawyers, banks) and / or taxpayers involved in the development of tax planning schemes aimed at avoiding or evading taxes by customers who use them.

TAX Compliance

Tax compliance has two objectives and consequent definitions, one exogenous, the other endogenous

Exogenous:

- i) spontaneous emergence of taxable bases

- ii) favor the fulfillment of tax obligations, both induced by the FSA through information transmitted to the tax payer or made available to the same.

Endogenous: transparent, preventive and voluntary collaboration between companies and tax administrations, aimed at mapping, identifying and preventing tax risk.

Endogenous TAX compliance

- The purpose of the "Tax compliance" is the construction / verification and improvement of the c.d. Tax Control Framework ("TFC"), ie the organizational and operational tool used to implement the strategy and fiscal policy adopted by the

Company. In other words, we can talk about the construction and activation of the "System for preventing tax risk".

- It is included in the risk management process implemented by the company, with specific reference to the identification, mitigation and control of the "tax risk", intended as a compliance risk (that is to say, erroneous adjustment to the fiscal discipline).

- The "System for the prevention of fiscal risk" is therefore placed within the general "Internal control and risk management system of the company".

- Currently, at international and domestic level, tax compliance is restricted to large Groups, which have articulated structures and can bear the costs of compliance of a risk assessment procedure, that is, systems for the detection, analysis and management of company data, accounting and law applied by the Group for the fulfillment of tax obligations.

- In Italy the Legislative Decree 5 August 2015, n. 128 introduced the "collaborative compliance regime", which is essentially based on three pivotal points:

- i) the introduction of enhanced forms of communication and cooperation between companies and the financial administration;

- ii) the forecast of structured corporate management and tax risk control systems for large tax payers;

- iii) the provision of incentives in the form of minor obligations for tax payers and reductions in penalties.

Exogenous TAX Compliance

In terms of Tax compliance, an important role is played by the services offered to tax payers, with particular attention to their quality and to the strengthening and extension of telematic services, pre-eminent in a digitized era. Not only for the development of telematic services, but in general for the strengthening of the activities of tax administrations, a role of primary importance is played by Information Technology (IT), as a tool to improve the effectiveness of administrative action, in terms performance of the entire apparatus, supporting the activities of control and verification, development and use of big data and data analytics. It is therefore not surprising that IT is a priority for all Financial Authorities.

Conclusions

- How this enormous amount of information will be managed is not known, also because it is always necessary to preserve the taxpayer's guarantees respectively to an effective privacy and the right of defense.

- Of course, however, and that the only plausible and desirable horizon is that of a relationship between tax and taxpayer based on a level of equality, frank, collaborative and transparent, without forcibly pursuing the "revenue" or even tending to "shirk" to it.

- Tax Compliance should therefore allow the achievement of a high level of compliance with tax obligations.

Thanks to Alessandro Savorana, a friend and colleague, for the support.